

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
JUDY L. HARTLEY (State Bar No. 110628)
Senior Counsel
Department of Business Oversight
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRMLA LICENSE No.: 413-0638
)	
THE COMMISSIONER OF BUSINESS)	
OVERSIGHT,)	SETTLEMENT AGREEMENT
)	
Complainant,)	
)	
v.)	
)	
VAN DYK MORTGAGE CORPORATION)	
authorized to do business in California as)	
VANDYK MORTGAGE CORPORATION,)	
)	
Respondent.)	

This Agreement is entered into between Respondent Van Dyk Mortgage Corporation authorized to do business in California as VanDyk Mortgage Corporation (“VanDyk”) and Complainant the Commissioner of Business Oversight (“Commissioner”), and is made with respect to the following facts:

RECITALS

A. VanDyk is a corporation in good standing, duly formed and existing pursuant to the laws of the State of Michigan, and authorized to conduct business in the State of California.

1 B. VanDyk is a residential mortgage lender licensed by the Commissioner pursuant to
2 the California Residential Mortgage Lending Act ("CRMLA") (Financial Code §50000 et seq.).
3 VanDyk has its principal place of business located at 2449 Camelot Court SE, Grand Rapids,
4 Michigan 49546. VanDyk currently has 11 branch office locations under its CRMLA license
5 located in California and elsewhere. VanDyk employs mortgage loan originators in its CRMLA
6 business.

7 C. The Department of Business Oversight ("Department"), through the Commissioner,
8 has jurisdiction over the licensing and regulation of persons and entities engaged in the business of
9 lending and/or servicing pursuant to the CRMLA.

10 D. On May 16, 2016, VanDyk was personally served by the Commissioner with a Notice
11 of Intention to Issue Order Suspending Residential Mortgage Lender Licenses and to Levy Penalties,
12 Accusation and accompanying documents dated May 11, 2016 ("Accusation"). VanDyk has filed a
13 Notice of Defense with the Commissioner regarding the Accusation.

14 E. On May 16, 2015, VanDyk was also personally served by the Commissioner with an
15 Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Statement of Facts In
16 Support of Order to Discontinue Violations Pursuant to Financial Code Section 50321 and Notice of
17 Intent to Make Order Final dated May 11, 2016 ("Order to Discontinue Violations") and an Order to
18 Refund Excessive Per Diem Interest Charges Pursuant to Financial Code Section 50504 dated May
19 11, 2016 ("Order to Refund")(collectively "Orders"). VanDyk has filed requests for hearing with
20 the Commissioner regarding the Orders.

21 F. VanDyk has advised the Commissioner that, rather than contesting the
22 Commissioner's Accusation and Orders through administrative proceedings, VanDyk desires to
23 resolve this matter informally and cooperatively by way of settlement.

24 G. The Commissioner hereby acknowledges that VanDyk has submitted information
25 demonstrating that it has adopted policies and procedures addressing the issues described in the
26 Accusation and Orders.
27
28

1 H. It is the intention and desire of the parties to resolve this matter without the necessity
2 of a hearing and/or other litigation.

3 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
4 forth herein, the parties agree as follows:

5 **TERMS AND CONDITIONS**

6 1. This Agreement is entered into for the purpose of judicial economy and expediency,
7 and to avoid the expense of a hearing, and possible further court proceedings.

8 2. VanDyk admits the per diem interest allegations contained in the Accusation and
9 Order to Discontinue Violations. The admissions of VanDyk are solely for the limited purposes of
10 these proceedings and any future proceeding(s) that may be initiated by or brought before the
11 Commissioner against VanDyk. It is the intent and understanding between the parties that this
12 Agreement, and particularly the admissions of VanDyk herein, shall not be binding or admissible
13 against VanDyk in any action(s) brought against VanDyk by third parties.

14 3. VanDyk hereby agrees that the Orders described in paragraph E above are hereby
15 deemed final orders. The Commissioner hereby acknowledges that VanDyk has submitted
16 information to the Commissioner documenting that VanDyk has completed all the refunds, including
17 interest at the rate of ten percent per annum, required by the Order to Refund.

18 4. VanDyk further agrees to pay to the Commissioner the sum of \$35,000.00 in
19 penalties, payable upon execution of this Settlement Agreement.

20 5. VanDyk acknowledges its right to an administrative hearing under the CRMLA in
21 connection with the Accusation and/or Orders and hereby waives that right to a hearing, and to any
22 reconsideration, appeal, or other rights which may be afforded pursuant to the CRMLA, the
23 California Administrative Procedure Act, the California Code of Civil Procedure, or any other
24 provision of law in connection with these matters.

25 6. VanDyk additionally agrees to conduct quarterly audits designed to determine
26 compliance with Financial Code section 50204(o) and California Civil Code section 2948.5 by and
27 through an independent certified public accountant, for a period of 12 months to commence
28

1 January 1, 2017. Each quarterly audit shall cover all California loans originated during that quarter.
2 VanDyk, by and through its independent certified public accountant, shall submit to the
3 Commissioner the results of each quarterly audit (“audit report”) within 60 calendar days of the
4 completion of each quarter, i.e., the first audit report would be due on or about May 31, 2017 for the
5 quarter January 1, 2017 through March 31, 2017. The audit reports shall be in Microsoft Excel
6 format, and include, at a minimum, the total number of loans made during this period, the number of
7 loans with per diem overcharges, and for each loan, the report shall list the borrower loan number,
8 name, address, loan amount, loan date, interest rate, disbursement date, date per diem interest
9 commenced, per diem charged, daily per diem interest amount, number of days per diem interest
10 charged, number of days per diem interest overcharged, overcharge amount (if applicable), date of
11 refund (if applicable), and proof of refund (if applicable). VanDyk further agrees that it shall pay a
12 penalty to the Commissioner, upon submission of each quarterly audit report, equal to \$300.00 for
13 each per diem interest overcharge discovered during the quarterly audit and not refunded to the
14 borrower within 30 days of loan funding.

15 7. VanDyk agrees that if it fails to comply with any of the provisions set forth in this
16 Agreement, and 5 days following the issuance of a written notice of demand, the Commissioner
17 may, in addition to all other available remedies under the CRMLA, summarily suspend the CRMLA
18 licenses of VanDyk until such time as VanDyk comes into full compliance. VanDyk hereby waives
19 any notice and hearing rights to contest such summary suspension which may be afforded under the
20 CRMLA, the California Administrative Procedure Act, the California Code of Civil Procedure, or
21 any other provision of law in connection therewith.

22 8. Except as set forth in paragraph 7 above, in consideration of the information provided
23 to the Commissioner by VanDyk as described in paragraph G above and VanDyk’s agreement to the
24 finality of the Orders and payment of penalties as provided for in paragraphs 3 and 4 above, the
25 Commissioner hereby agrees not to suspend the residential mortgage lender licenses of VanDyk.
26 Accordingly, this Agreement, which resolves the Accusation and Orders, does not affect the
27 licensing status of VanDyk set forth in paragraph B above, and the licenses of VanDyk are in good
28 standing.

1 9. This Agreement may be revoked and the Commissioner may pursue any and all
2 remedies available under law against VanDyk, if the Commissioner later finds out that VanDyk
3 knowingly or willfully withheld information used and relied upon in this Agreement.

4 10. This Agreement is binding on all heirs, assigns and/or successors in interest.

5 11. This Agreement does not create any private rights or remedies against VanDyk,
6 create any liability for VanDyk or limit defenses of VanDyk for any person or entity not a party to
7 this Agreement.

8 12. The parties hereby acknowledge and agree that this Agreement is intended to
9 constitute a full, final and complete resolution of the Accusation and Orders and that no further
10 proceedings or actions will be brought by the Commissioner in connection with these matters either
11 under the CRMLA, or any other provision of law, to include per diem interest charges on all
12 California loans originated through May 17, 2016, excepting therefrom any proceeding or action if
13 such proceeding or action is based upon facts not presently known to the Commissioner and which
14 were actively concealed from the Commissioner by VanDyk.

15 13. The parties further acknowledge and agree that nothing contained in this Agreement
16 shall operate to limit the Commissioner's ability to assist any other agency, (city, county, state or
17 federal) with any prosecution, administrative, civil or criminal, brought by any such agency against
18 VanDyk or any other person based upon any of the activities alleged in these matters or otherwise.

19 14. Each of the parties represents, warrants, and agrees that it has received independent
20 advice from its attorney(s) and/or representatives with respect to the advisability of executing this
21 Agreement.

22 15. Each of the parties represents, warrants, and agrees that in executing this Agreement
23 it has relied solely on the statements set forth herein and the advice of its own counsel and/or
24 representative. Each of the parties further represents, warrants, and agrees that in executing this
25 Agreement it has placed no reliance on any statement, representation, or promise of any other party,
26 or any other person or entity not expressly set forth herein, or upon the failure of any party or any
27 other person or entity to make any statement, representation or disclosure of anything whatsoever.
28 The parties have included this clause: (1) to preclude any claim that any party was in any way

fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

16. This Agreement is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their respective representatives, and any other person or entity, with respect to the subject matter covered hereby.

17. In that the parties have had the opportunity to draft, review and edit the language of this Agreement, no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected, to, or involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

18. The waiver of any provision of this Agreement shall not operate to waive any other provision set forth herein, and any waiver, amendment and/or change to the terms of this Agreement must be in writing signed by the parties.

19. This Agreement shall not become effective until signed and delivered by all parties.

20. This Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document. This Agreement may be executed by facsimile signature, and any such facsimile signature by any party hereto shall be deemed to be an original signature and shall be binding on such party to the same extent as if such facsimile signature were an original signature.

21. Any notice or report required under this Agreement shall be addressed as follows:

To Respondent:	James W. Brody, Esq. American Mortgage Law Group, P.C. 75 Rowland Way, Suite 350 Novato, California 94945
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To the Commissioner: Judy L. Hartley, Esq.
Senior Corporations Counsel
Department of Business Oversight
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344

22. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Agreement.

Dated: 12/21/16 JAN LYNN OWEN
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner

Dated: 12/20/16 VAN DYK MORTGAGE CORPORATION dba
VANDYK MORTGAGE CORPORATION

By _____
THOMAS LEE VANDYK, President

APPROVED AS TO FORM:

AMERICAN MORTGAGE LAW GROUP, P.C.

By _____
JAMES W. BRODY, ESQ. Attorneys for
VANDYK MORTGAGE CORPORATION

Commissioner of Business Oversight

By _____
JUDY L. HARTLEY
Senior Counsel